

Topic: COBRA and the Trade Act of 2002

Background

The Trade Act of 2002, Public Law 107-210, enacted on August 6, 2002, amended ERISA to provide a second 60-day COBRA election period for individuals who are eligible for trade adjustment assistance (TAA) or alternate trade adjustment assistance (ATAA), and who did not elect COBRA during the initial 60-day election period that directly followed a TAA-related loss of coverage. The intent of this second 60 day election period is to enable those individuals who became TAA or ATAA-eligible after their initial COBRA election period has expired to take advantage of the tax credit available under the Trade Act of 2002. With the help of the Health Coverage Tax Credit (HCTC), the cost of COBRA benefits may become financially manageable for some individuals who could not otherwise afford health coverage without the credit. These new COBRA provisions are effective for individuals whose successful petitions for TAA or ATAA were filed on or after November 4, 2002.

TAA/ATAA-Eligibility

Individual TAA/ATAA-eligibility is determined by a process that begins when a group representing an employer petitions the Department of Labor for authorization for its workers to apply for TAA or ATAA benefits. Generally, an employer can become TAA/ATAA-certified if the employer meets the following criteria:

- Employees have been totally or partially laid off (a partial layoff means a reduction in hours and wages to 80% or less per week)
- Sales have or production has declined due to trade
- Increased imports have contributed to employee layoffs

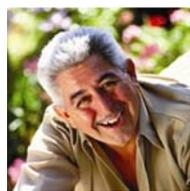


If the Department of Labor approves the employer's petition, the employees are notified in writing by the State Workforce Agency. Once employees receive notification they may apply for TAA or ATAA benefits.

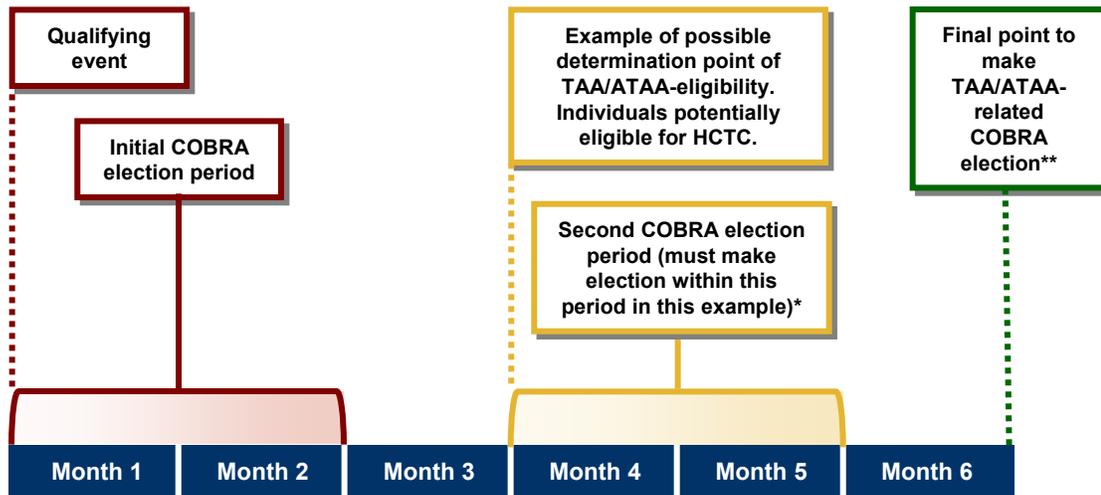
Individuals are TAA HCTC-eligible recipients when they are either receiving Trade Readjustment Assistance (TRA) benefits or are eligible to receive TRA payments but have not yet exhausted unemployment insurance benefits.

Individuals are ATAA HCTC-eligible recipients when they are eligible to begin receiving their ATAA benefits.

Individuals become eligible for a second 60-day COBRA election period on the first day of the month in which they become an eligible TAA or ATAA recipient



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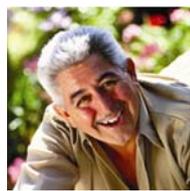
TAA/ATAA-Related COBRA Election Period Timeline

*TAA/ATAA-related election period can begin any time between months 3 and 6, but must end by the end of month 6.

**If TAA/ATAA-eligibility is determined after Month 6, no new COBRA election period is provided to the individual.

Highlights of the TAA/ATAA-Related COBRA Election Period

- The additional 60-day COBRA election period is available to TAA and ATAA recipients, but not to individuals eligible for the HCTC through the PBGC.
- The additional 60-day COBRA election period begins on the first day of the month wherein the individual becomes an eligible TAA or ATAA recipient (when they first become eligible to receive TRA payments or ATAA benefits, respectively).
- The COBRA election must be made not later than six months after the date of the initial TAA/ATAA-related loss of coverage. After this point, the individual is no longer eligible for a second, TAA/ATAA-related COBRA election period if one has not yet been exercised.
- COBRA coverage elected during the second election period is NOT retroactive to the date of the initial loss coverage. It begins on the first date of the second COBRA election period (However, the lapse in coverage from the initial loss date to the start of the second election period is not counted as a lapse in coverage for the purposes of HIPAA's 63-day lapse in coverage rule).
- The second COBRA election period does not extend the original COBRA benefit period, which is still measured from the date of the loss of coverage due to the qualifying event. An individual will not receive a second COBRA election notice; the termination date on the original notice is valid.



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Frequently Asked Questions

Question: How will a health plan administrator (HPA) know that an individual is eligible for a temporary extension of their COBRA election period (i.e. a special COBRA election period)?

Answer: State workforce agencies will be providing TAA and ATAA eligible individuals with certificates that specify the date that they have been determined to be TAA eligible. The special election period, sometimes referred to as the second election period, is measured as sixty days from the first day of the month in which the individual is certified.

COBRA continuation coverage elected during the special election period begins on the first day of the of the special election period. HPAs can ask the TAA/ATAA recipient for a copy of this certificate to determine whether the individual is eligible for the special COBRA election period and when the special 60-day COBRA election period begins. This certificate should not be confused with the letter that the TAA/ATAA recipient receives when his or her employer's petition for DOL worker group certification is approved.

Question: What is the impact on a TAA/ATAA recipient's HCTC registration process if they elect COBRA during the second election period?

Answer: The TAA/ATAA recipient's HCTC registration process does not change. The individual will need to provide a copy of their original COBRA election letter, which they received as a result of their initial loss of group coverage. Note: Since there is no change in the COBRA termination date, no new COBRA election notice is sent to the individual.

Question: What party is required to notify the TAA/ATAA recipient of their right to a special COBRA election period?

Answer: Currently, no entity is required to notify the TAA recipient of the special 60-day election period and what it means for them. The Trade Act of 2002 does not present any specific notification requirement for the TAA/ATAA-related COBRA provisions. However, the TAA/ATAA recipient is likely to receive notification from the employer, the union, or the state workforce agency. Employers may choose to notify their employees via amended summary plan descriptions (SPDs) and COBRA election notices describing the TAA/ATAA-related COBRA provisions.

